

**MEMORANDUM OF AGREEMENT  
AMONG  
THE FEDERAL DEPOSIT INSURANCE CORPORATION,  
FIRST UNITED BANK AND TRUST COMPANY, AND  
THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICE  
REGARDING THE ESTABLISHMENT OF A NEW BRANCH BANK  
AT 512 NORTH BROADWAY AVENUE, OKLAHOMA CITY, OKLAHOMA**

**WHEREAS**, First United Bank and Trust Company, Durant, Oklahoma ("Bank") has submitted an application to the Federal Deposit Insurance Corporation ("FDIC") to open a new branch location ("Application") in the Markham Building at 512 North Broadway Avenue in Oklahoma City, Oklahoma ("Property"); and

**WHEREAS**, the FDIC understands that in connection with the Application, the Bank has renovated and remodeled the Property, including exterior and interior modifications, to accommodate the Bank's operation (collectively, "Project"); and

**WHEREAS**, the Bank has provided the details and photographs of the Project as set forth on Exhibit 1 attached hereto; and

**WHEREAS**, the Bank must obtain approval from the FDIC in connection with the Application for the Property;

**WHEREAS**, the FDIC understands that the Property is located within the Automobile Alley Historic District listed on the National Register of Historic Places and that the Property contributes to the significance of the Automobile Alley Historic District; and

**WHEREAS**, the FDIC has determined the Project at the Property to be an undertaking ("Undertaking") subject to the review process of Section 106 of the National Historic Preservation Act, 54 U.S.C. §§ 300101 *et seq.*, and its implementing regulations, 36 C.F.R. Part 800 ("Section 106 Review"); and

**WHEREAS**, the FDIC has defined the Undertaking's area of potential effect as the city lots and building comprising the Property; and

**WHEREAS**, the Bank, pursuant to its delegation as a consulting party by the FDIC, initiated the Section 106 Review with the Oklahoma State Historic Preservation Office ("SHPO") in accordance with 36 C.F.R. § 800.2(c)(4); and

**WHEREAS**, the FDIC has consulted with the Bank and the SHPO regarding the effects of the Undertaking; and

**WHEREAS**, the FDIC has invited the Bank to sign this agreement as an invited signatory, as

defined in 36 C.F.R. § 800.6(c)(2); and

**WHEREAS**, members of the general public and other interested parties were afforded an opportunity to participate in and comment on the proposed Undertaking pursuant to a notice published in the Journal Record, Oklahoma City, Oklahoma on May 5, 2016, and in the Durant Daily Democrat on May 28, 2016, in accordance with 36 C.F.R. § 800.2(d) and 36 C.F.R. § 800.3(e); and

**WHEREAS**, the FDIC has obtained documentation from the Bank of approvals of the Undertaking by the City of Oklahoma City Downtown Design Review Committee on May 19, 2016, and September 29, 2016, which approvals were received subsequent to a public hearing on the Undertaking by the City of Oklahoma City Downtown Review Committee; and

**WHEREAS**, the FDIC, after making a reasonable and good faith effort, has not identified any federally recognized Indian tribes in Oklahoma that may have attached religious or cultural significance to the Property in accordance with 36 C.F.R. § 800.2(c)(2)(ii), or identified any evidence to suggest that there are any such Indian tribes that should be invited to be a consulting party pursuant to 36 C.F.R. § 800.3(f)(2); and

**WHEREAS**, the FDIC has discovered no evidence that the Bank intended to avoid the Section 106 Review or to intentionally adversely affect historic properties, and therefore, the FDIC has determined that Section 110(k) of the National Historic Preservation Act, 54 U.S.C. § 306113, does not apply to the Bank's activities with respect to the Property; and

**WHEREAS**, the FDIC determined that the Undertaking will have an adverse effect on the Property because the Property contributes to the significance of the Automobile Alley Historic District, which is listed on the National Register of Historic Places; and

**WHEREAS**, the FDIC, in accordance with 36 C.F.R. § 800.6(a)(1), has notified the Advisory Council on Historic Preservation ("ACHP") of its adverse effect determination and provided specified documentation pertaining to such notice, and the ACHP has determined to not participate in the consultation pursuant to 36 C.F.R. § 800.6(a)(1)(iii); and

**WHEREAS**, the FDIC has determined that the proposed Undertaking should be approved and finds the adverse effect can be mitigated by the implementation of the stipulations contained in this Memorandum of Agreement ("MOA").

**NOW, THEREFORE**, the FDIC, the SHPO and the Bank agree that the Undertaking will be implemented in accordance with the following stipulations in order to take into account the effect of the Undertaking on historic properties.

## **STIPULATIONS**

**The FDIC, in coordination with the Bank, will ensure that the following measures are**

**carried out:**

## **I. DOCUMENTATION OF THE HISTORIC SIGNIFICANCE OF THE MARKHAM BUILDING AND THE AUTOMOBILE ALLEY HISTORIC DISTRICT**

The Bank will document the historic significance of the Markham Building and the Automobile Alley Historic District through photographs, drawings and narrative description (collectively, "Documentation"). Such Documentation will describe the history of the Markham Building and explain the significance of the Markham Building and the Automobile Alley Historic District. The Bank will submit a draft version of the Documentation to the FDIC for review and comment. The FDIC will provide the Bank with written acceptance or required revisions of the submitted Documentation within 15 business days of receipt from the Bank, or will be deemed to have accepted the Documentation as presented. The Bank will revise the Documentation to reflect any recommendations of the FDIC. Thereafter, the Bank will submit the final Documentation to the FDIC. The Bank will display such final Documentation prominently in the new branch at the Property for view by customers, community groups and historic preservation groups ("Historic Display Area"). Within 15 business days of the FDIC's acceptance of the final Documentation, the Bank will deposit a copy of the final Documentation with the FDIC, and will provide a certification with the FDIC that the above-described Documentation is on display in the Historic Display Area. The Documentation in the Historic Display Area will remain as a permanent addition to the new branch at the Property. All costs associated with the Documentation and the Historic Display Area will be paid for by the Bank.

## **II. DOCUMENTATION PROVIDED TO SHPO**

A. The SHPO considers that it has adequate documentation on file for the Property through the National Register of Historic Places Registration form for the Automobile Alley Historic District and through a Historic Preservation Certification Application, Part 1 for the Markham Building in its files; therefore, to mitigate the adverse effects to the Markham Building, the FDIC will ensure that the Bank:

1. Within thirty (30) days of the execution of this MOA, consult the SHPO to determine adequate photographic coverage to document the alterations to the Markham Building's exterior and interior resulting from the Undertaking.

2. Within sixty (60) days of the execution of this MOA, request the SHPO to review the documentation photographs for the adequacy of coverage and for their quality before production of the final photographic documentation for submission to the SHPO.

3. Within thirty (30) days of receipt of the SHPO's approval of the selected images, submit the photographs to the SHPO in accordance with requirements for photographic documentation for National Register of Historic Places nominations (<http://www.okhistory.org/shpo/nominationrequirements.htm>). In brief, the photographs will be a

minimum of six megapixels taken with a digital SLR camera, 200 x 3000 pixel image, and labeled with the State \_County \_Building Name \_number\_, and in TIFF format. The digital images will be submitted to the SHPO on gold archival CDs. The photographic prints will be 4" X 6" in size and labeled in accordance with the SHPO's instructions.

### **III. POST-REVIEW DISCOVERIES**

If historic properties are discovered or unanticipated effects on historic properties found after the FDIC's review is completed, the Bank will notify the FDIC and the SHPO immediately but no later than three business days from discovery, and the parties will proceed in accordance with the provisions governing post-review discoveries set forth at 36 C.F.R. § 800.13(b).

### **IV. MONITORING AND REPORTING**

Each year (calculated from the date of execution of this MOA) throughout the duration of this MOA, the Bank will provide all parties to this MOA a summary report detailing work undertaken pursuant to its terms. Such report will include any scheduling changes proposed, any new construction or renovation proposed, any problems encountered, and any disputes and objections received in the Bank's efforts to carry out the terms of this MOA.

### **V. DISPUTE RESOLUTION**

Should any party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the FDIC will consult with such party to resolve the objection. If the FDIC determines that such objection cannot be resolved, the FDIC will:

A. Forward all documentation relevant to the dispute, including the FDIC's proposed resolution, to the ACHP. The ACHP will provide the FDIC with its advice on the resolution of the objection within 30 business days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the FDIC will prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and the parties to the MOA, and provide them with a copy of the written response. The FDIC will then proceed according to its final decision.

B. If the ACHP does not provide its advice regarding the dispute within the 30 business day time period, the FDIC may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the FDIC will prepare a written response that takes into account any timely comments regarding the dispute from the parties to the MOA, and provide them and the ACHP with a copy of such written response.

C. The responsibilities of all parties to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute will remain unchanged.

## **VI. AMENDMENTS**

This MOA may be amended when such amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

## **VII. TERMINATION**

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party will immediately consult with the other parties to attempt to develop an amendment per Stipulation V above. If within 30 business days an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories. Once the MOA is terminated, the FDIC must either (a) execute an MOA pursuant to 36 C.F.R. § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. The FDIC will notify the signatories as to the course of action it will pursue.

## **VIII. DURATION**

Unless amended pursuant to Stipulation V or terminated pursuant to Stipulation VI, this MOA will be in effect through the Bank's implementation of the stipulations to this MOA and the Undertaking. This MOA will terminate and have no further force and effect when the FDIC, in consultation with the other parties, determines that all of its terms have satisfactorily been fulfilled.

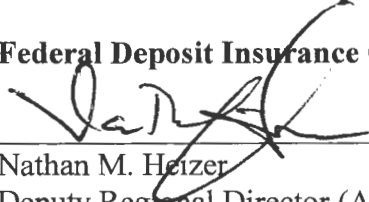
Execution of this MOA by the FDIC, the SHPO and the Bank, the submission of documentation and filing of this MOA with the ACHP pursuant to 36 C.F.R. § 800.6(b)(1)(iv) prior to the FDIC's approval of this Undertaking, and implementation of its terms evidence that the FDIC has taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment. Furthermore, the parties affirm by their execution of this MOA, that they are duly authorized to execute this MOA and empowered to bind their respective agencies and/or entities to the terms and obligations set forth in this MOA.

(Signatures On Following Pages)

**AGREED:**

**SIGNATORIES:**

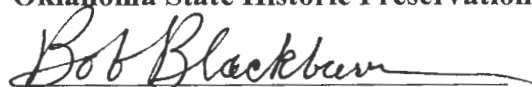
**Federal Deposit Insurance Corporation**

  
\_\_\_\_\_  
Nathan M. Heizer  
Deputy Regional Director (Acting)  
Dallas, Texas

Date 5/8/17

(Remaining Signatures On Following Pages)

**Oklahoma State Historic Preservation Office**



Bob L. Blackburn


State Historic Preservation Officer

Date 5/8/2017

(Remaining Signature On Following Page)

**INVITED SIGNATORY:**

**First United Bank and Trust Company, Durant, Oklahoma**

  
\_\_\_\_\_  
Greg Massey  
Chief Executive Officer

Date 5-8-17

(Remaining Signature to MOA)